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*Counsel for Defendant Google LLC*

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

19 CHASOM BROWN, WILLIAM BYATT,  
20 JEREMY DAVIS, CHRISTOPHER  
21 CASTILLO, and MONIQUE TRUJILLO,  
individually and on behalf of all similarly  
situated.

Case No. 4:20-cv-03664-YGR-SVK

Plaintiffs

**DECLARATION OF JONATHAN TSE IN  
SUPPORT OF PLAINTIFFS'  
ADMINISTRATIVE MOTION TO SEAL  
DOCUMENTS (DKT. 460)**

24

Judge: Hon. Yvonne Gonzalez Rogers

25 | GOOGLE LLC

Defendant

27 |

28

1 I, Jonathan Tse, declare as follows:

2 1. I am a member of the bar of the State of California and an attorney at Quinn Emanuel  
 3 Urquhart & Sullivan, LLP, attorneys for Defendant Google LLC (“Google”) in this action. I make  
 4 this declaration of my own personal, firsthand knowledge, and if called and sworn as a witness, I  
 5 could and would testify competently thereto.

6 2. I am making this declaration pursuant to Civil Local Rule 79-5(e)-(f) as an attorney  
 7 for Google as the Designating Party, pursuant to Civil Local Rule 79-5(f)(3) in response to Dkt.  
 8 460.

9 3. On March 4, 2022, Plaintiffs filed an administrative motion to file under seal portions  
 10 of the Reply In Support of Plaintiff’s Motion for Leave to Amend Complaint (R. CIV. P. 15(a))  
 11 (Dkt. 460). On March 4, 2022, I received an unredacted service copy of these documents.

12 4. I have reviewed the documents that Plaintiffs seek to file under seal pursuant to Civil  
 13 Local Rule 79-5, unredacted versions of which have been filed at Docket Entry 460. Based on my  
 14 review, Google has both good cause and compelling reasons to seal the following confidential  
 15 information:

Document	Basis for Sealing
17 Reply In Support of Plaintiff’s 18 Motion for Leave to Amend 19 Complaint (R. CIV. P. 15(a)) Dkt. 460-2	The information requested to be sealed contains Google’s highly confidential and proprietary information, including details related to project names, internal identifiers, Google’s internal practices with regard to Incognito and its proprietary functions, as well as internal metrics and investigation into financial impact of certain features, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google’s competitors. Such confidential and proprietary information reveals Google’s internal strategies, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. <i>See</i> Dkt. 81 at 2-3. Public disclosure of such confidential and proprietary information could affect Google’s competitive standing as competitors may alter their systems and practices relating to competing products. It may also place Google at an increased risk of cyber security threats, as third parties may seek to use the information to compromise Google’s internal practices relating to competing products.
20 Pages 3:13-16, 3:24, 8:20-21, 21 9:17, 9:19-21, 9:24 , 10:2, 10:8, 10:13	
22 Google joins Plaintiffs’ motion to 23 seal in part with respect to this 24 document.	

1	Exhibit 2	The information requested to be sealed contains Google's
2	Entirety	highly confidential and proprietary information, including
3	Google joins Plaintiffs' motion to	details related to project names, internal identifiers, as well as
4	seal in full with respect to this	internal metrics and investigation into financial impact of
5	document.	certain features, that Google maintains as confidential in the
6		ordinary course of its business and is not generally known to
7		the public or Google's competitors. Such confidential and
8		proprietary information reveals Google's internal strategies,
9		and business practices for operating and maintaining many of
10		its important services, and falls within the protected scope of
11		the Protective Order entered in this action. <i>See</i> Dkt. 81 at 2-3.
		Public disclosure of such confidential and proprietary
		information could affect Google's competitive standing as
		competitors may alter their systems and practices relating to
		competing products. It may also place Google at an increased
		risk of cyber security threats, as third parties may seek to use
		the information to compromise Google's internal practices
		relating to competing products.

12       5.     Google has significantly pared back Plaintiffs' proposed redactions to the documents  
 13 and exhibits Plaintiffs' originally filed under seal. Furthermore, Google does not seek to redact or  
 14 file under seal any of the remaining portions of Plaintiffs' Reply not indicated in the table above.

15       6.     A party seeking to seal material must "establish[] that the document, or portions  
 16 thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law"  
 17 (*i.e.*, is "sealable"). Civ. L.R. 79-5(b).

18       7.     The sealing request must also "be narrowly tailored to seek sealing only of sealable  
 19 material." *Id.* "The publication of materials that could result in infringement upon trade secrets has  
 20 long been considered a factor that would overcome the strong presumption" in favor of public  
 21 access. *Apple Inc. v. Psystar Corp.*, 658 F.3d 1150, 1162 (9th Cir. 2011). The Ninth Circuit has  
 22 confirmed that "ordinarily a party must show 'compelling reasons' to keep a court document under  
 23 seal." *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1095 (9th Cir. 2016). Quoting the  
 24 Supreme Court's decision in *Nixon v. Warner Communications*, however, the Court has noted that  
 25 examples of what might constitute a compelling reason include "'sources of business information  
 26 that might harm a litigant's competitive standing.'" *Id.* at 1097 (quoting 435 U.S. 589, 598-99  
 27 (1978)).

1       8.       Courts have repeatedly found it appropriate to seal documents that contain “business  
 2 information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*,  
 3 435 U.S. 589, 589-99 (1978). Materials that could harm a litigant’s competitive standing may be  
 4 sealed under the “compelling reasons” standard. *See, e.g., Icon-IP Pty Ltd. v. Specialized Bicycle*  
 5 *Components, Inc.*, 2015 WL 984121, at \*2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately  
 6 sealable under the ‘compelling reasons’ standard where that information could be used to the  
 7 company’s competitive disadvantage”) (citation omitted). Courts in this district have also  
 8 determined that motions to seal may be granted as to potential trade secrets. *See, e.g., United*  
 9 *Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015 WL 295584, at \*3 (N.D. Cal. Jan. 21, 2015)  
 10 (rejecting argument against sealing “that [the party] ha[s] not shown that the substance of the  
 11 information . . . amounts to a trade secret”).

12       9.       Although the materials that Google seeks to seal here easily meet the higher  
 13 “compelling reasons” standard, the Court need only consider whether these materials meet the lower  
 14 “good cause” standard. Pursuant to Federal Rule of Civil Procedure 26(c), “[t]he court may, for  
 15 good cause, issue an order...requiring that a trade secret or other confidential research, development,  
 16 or commercial information not be revealed or be revealed only in a specified way.” Fed. R. Civ. P.  
 17 26(c)(1)(G). A party seeking to seal information in a non-dispositive motion must show only “good  
 18 cause.” *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). “While  
 19 recognizing that there is little clarity as to what, exactly, constitutes a ‘dispositive’ motion, and that  
 20 our circuit has not articulated the difference between a dispositive and nondispositive motion the  
 21 district court decided to read dispositive to mean that unless the motion could literally lead to the  
 22 final determination on some issue, a party need show only good cause to keep attached documents  
 23 under seal.” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1095–96 (9th Cir. 2016)  
 24 (internal quotation marks omitted). A “motion for leave to file a (sic) amend a complaint is generally  
 25 considered a nondispositive matter.” *Au v. Funding Grp., Inc.*, No. CIV. 11-00541 SOM, 2012 WL  
 26 3686893, at \*1 (D. Haw. Aug. 24, 2012), *aff’d*, 588 F. App’x 707 (9th Cir. 2014).

27       10.      Under the “good cause” standard, courts will seal statements reporting on a  
 28 company’s users, sales, investments, or other information that is ordinarily kept secret for

1 competitive purposes. *See Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at \*1 (S.D. Cal. Mar.  
 2 24, 2014); *Nitride Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at \*1 (N.D. Cal. Aug.  
 3 1, 2018) (granting motion to seal “[c]onfidential and proprietary information regarding  
 4 [Defendant]’s products” under “good cause” standard) (Van Keulen, J.). The select information  
 5 Google seeks to seal is the type that the Ninth Circuit has held to properly be kept under seal. *See*  
 6 *Sun Microsystems Inc. v. Network Appliance*, No. C-08-01641-EDL, 2009 WL 5125817, at \*9  
 7 (N.D. Cal Dec. 21, 2009) (sealing confidential business information, which if disclosed could cause  
 8 harm to the parties). This information retains independent economic value from not being generally  
 9 known to, and not being readily ascertainable through proper means to the general public. 18 U.S.C.  
 10 § 1839(3)(B).

11       11.     The information Google is seeking to seal all comprise confidential and proprietary  
 12 information as the materials involve highly sensitive features of Google’s internal systems and  
 13 operations that Google does not share publicly. Specifically, this information provides details  
 14 related to project names, internal identifiers, Google’s internal communications and practices with  
 15 regard to Incognito and its proprietary functions, as well as internal metrics and investigation into  
 16 financial impact of certain features, that Google maintains as confidential in the ordinary course of  
 17 its business and is not generally known to the public or Google’s competitors. Such information  
 18 reveals Google’s internal strategies, system designs, and business practices for operating and  
 19 maintaining many of its important services while complying with legal and privacy obligations.

20       12.     Public disclosure of the above-listed information would harm Google’s competitive  
 21 standing it has earned through years of innovation and careful deliberation, by revealing sensitive  
 22 aspects of Google’s proprietary systems, strategies, and designs to Google’s competitors, allowing  
 23 them to alter their own plans for product development and/or commercialization, time strategic  
 24 litigation, focus their patent prosecution strategies, or otherwise unfairly compete with Google. That  
 25 alone is a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*,  
 26 No. 14-cv-02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to  
 27 seal certain sensitive business information related to Google’s processes and policies to ensure the  
 28 integrity and security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*,

1 No. 3:16-cv-02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales  
 2 data because “disclosure would harm their competitive standing by giving competitors insight they  
 3 do not have”); *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at \*2 (N.D.  
 4 Cal. Aug. 20, 2014) (sealing “highly sensitive information regarding Delphix’s product architecture  
 5 and development”).

6       13. Moreover, if publicly disclosed, malicious actors may use such information to seek  
 7 to compromise Google’s internal servers and components thereof. Google would be placed at an  
 8 increased risk of cyber security threats. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963,  
 9 at \*3 (N.D. Cal. Sept. 25, 2013) (sealing “material concern[ing] how users’ interactions with the  
 10 Gmail system affects how messages are transmitted” because if made public, it “could lead to a  
 11 breach in the security of the Gmail system”). The security threat is an additional reason for this  
 12 Court to seal the identified information. Thus, the confidential information at issue satisfies both the  
 13 compelling reason and good cause standards.

14       14. Google’s request is narrowly tailored in order to protect its confidential information.  
 15 These redactions are limited in scope and volume. Because the proposed redactions are narrowly  
 16 tailored and limited to portions containing Google’s highly-confidential or confidential information,  
 17 Google requests that the portions of the aforementioned documents be redacted from any public  
 18 version of those documents.

19       I declare under penalty of perjury of the laws of the United States that the foregoing is true  
 20 and correct. Executed in San Francisco, California on March 11, 2022.

21  
 22 DATED: March 11, 2022

QUINN EMANUEL URQUHART &  
 23 SULLIVAN, LLP

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By /s/ Jonathan Tse  
 Jonathan Tse

Attorney for Defendant